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Report on the Status of Environmental Enforcement in the Dominican Republic

Consultant's Report

REPORT ON THE STATUS OF ENVIRONMENTAL ENFORCEMENT IN THE DOMINICAN REPUBLIC

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CONTENTS

1	Background	1
2	Activities of the Consultancy.....	3
	2.1 Assessment and Seminar Planning	3
	2.2 Seminars in Enforcement of Environmental Policies	3
3	Analysis of the Status of Environmental Enforcement	7
	3.1 Introduction	7
	3.2 Secretariat of Environment and Natural Resources.....	7
	3.2.1 Organization and Structure for Enforcement Activities.....	7
	3.2.2 Types of Enforcement Activity.....	8
	3.2.3 Authority and Policies for Administrative Enforcement, Coordination with Environmental Prosecutor's Office, and Coordination with Other Institutions	9
	3.2.4 Internal Procedures and Training	10
	3.2.5 Technical Assistance to the Regulated Community.....	11
	3.3 Prosecutor in Defense of Environment (Environmental Prosecutor's Office)	11
	3.4 Environmental Police	13
	3.5 Municipalities	13
4	Summary of Problems Detected and Recommended Solutions.....	15
5	Prioritization of Recommended Actions.....	19

1 BACKGROUND

This report summarizes the activities and findings of a short-term consultancy to assess the status of environmental enforcement activities in the Dominican Republic and determine problems and needs for technical assistance.

The information contained in this report was obtained during a two-week period, which included interviews with personnel from the State Secretariat of Environment and Natural Resources (Secretaría de Estado de Medio Ambiente y Recursos Naturales) and input from participants in two seminars held for Secretariat staff, members of the Environmental Prosecutor's Office (Procuraduría del Defenso del Medio Ambiente), and representatives from several municipal environmental management units (Unidades de Gestión Ambiental Municipal or UGAMs).

In reviewing the information presented here, it should be recognized that the evaluation of the status of enforcement activities was a rapid and not an in-depth assessment.

2 ACTIVITIES OF THE CONSULTANCY

2.1 Assessment and Seminar Planning

Prior to traveling to the Dominican Republic, the consultant reviewed the Environment Law (64-00) and existing environmental norms. In addition, the consultant researched environmental enforcement programs in other countries as input into the planned seminars.

During the first week of the consultancy, meetings were held with representatives of the Sub-Secretariat of Environmental Management, Sub-Secretariat of Forest Resources, Directorate of Environmental Regulations and Norms, and the Environmental Prosecutor's Office to collect information about enforcement responsibilities, policies, procedures, activities, and problems.

The seminars were also planned during the first week, in coordination with the following representatives from the Secretariat:

- ◆ Gustavo Mena, the legal director of the Secretariat
- ◆ Nelson Castillo, the legal specialist in the Sub-Secretariat of Environmental Management
- ◆ Yolanda de Leon, a technical specialist in the Sub-Secretariat of Environmental Management.

2.2 Seminars in Enforcement of Environmental Policies

The seminars were held during the second week of the consultancy.

The first two-day seminar, held on March 29 and 30, 2004, was attended by staff of the Secretariat, representing the Sub-Secretariats of Environmental Management, Soils and Water, Coastal and Marine Resources, Forest Resources, and Biodiversity. The main objectives of the seminar were to provide a forum for discussing the Environment Law (64-00) and some of the newly adopted

norms, in terms of their provisions for environmental enforcement; identify problems related to enforcement; and develop ideas for resolving problems.

The curriculum of the first seminar involved plenary exercises, presentations, and group exercises designed to foster full participation and exchange of ideas by all the attendees. The topics of the presentations were:

- ◆ Definition of environmental enforcement and elements, tools, and activities;
- ◆ Authority for environmental supervision and enforcement as established in the Environment Law and related norms;
- ◆ Administrative enforcement authority as compared to criminal enforcement authority and the role of the Environmental Prosecutor's Office;
- ◆ Institutional enforcement authority and requirements for coordination with other regulatory agencies;
- ◆ Environmental inspections: motives, planning, activities, and reportings;
- ◆ Examples of systems for environmental enforcement, criteria for determining sanctions, and supervision of compliance of enforcement orders.

The second seminar, held on March 31 and April 1, 2004, was attended by members of the Environmental Prosecutor's Office and representatives of a few environmental management units from municipalities. Representatives of the Environmental Secretariat also participated in the second seminar to ensure a good interchange of ideas. The main objectives of the seminar were to educate the representatives from the municipalities about the environmental law, present explanations of how the Secretariat and the Prosecutor's office carry out enforcement activities, allow for discussion of roles and responsibilities, and assist the municipalities in understanding how they could begin to insert themselves into environmental management and enforcement in coordination with the Secretariat and the Environmental Prosecutor. The topics and activities were basically the same as for the first seminar, but with greater emphasis on municipal authority for environmental enforcement. In addition, during the second seminar, the Environmental Prosecutor's Office gave a presentation on how it functions in responding to complaints and how it coordinates with the Secretariat. Also during the second seminar, the consultant gave a presentation of examples of innovative programs underway in other countries at all levels of government to achieve environmental compliance.

For both seminars the consultant served as the primary facilitator and also presented the topics related to defining environmental enforcement, its instruments and activities; environmental inspections, administrative enforcement actions, and criteria for administrative sanctioning; examples of inter-institutional coordination; and innovative environmental compliance programs underway in other countries.

Input from participants in the seminars was also a key source of information for the assessment of environmental enforcement activities in the country.

3 ANALYSIS OF THE STATUS OF ENVIRONMENTAL ENFORCEMENT

3.1 Introduction

Three agencies currently have primary responsibility for environmental enforcement actions in the country: the State Secretariat of Environment and Natural Resources, the Prosecutor for Defense of the Environment (Environmental Prosecutor's Office), and the Environmental Police. In addition, national military police, local police, local justices of the peace, and personnel from the municipalities play a role in environmental enforcement, although a less prominent one. The role of municipalities in environmental enforcement activity is expected to grow as the Environmental Management Units (UGAMs) become established and the municipalities adopt their own environmental norms.

The main activities of each of the three primary agencies, as well as some observations about the municipalities, are summarized below, together with problems identified.

3.2 Secretariat of Environment and Natural Resources

3.2.1 ORGANIZATION AND STRUCTURE FOR ENFORCEMENT ACTIVITIES

According to current organization and functions of the Secretariat, supervision and enforcement actions are concentrated in the following directorates and departments within the five Sub-Secretariats:

- ♦ Sub-Secretariat of Environmental Management, Directorate of Environmental Quality, Department of Control and Auditing

- ◆ Sub-Secretariat of Soils and Water, Directorate of Evaluation of Extraction of Aggregates, Department of Supervision and Control, and Department of Regulation of Extraction of Aggregates (mostly related to permits issued for nonmetallic mining)
- ◆ Sub-Secretariat of Coastal and Marine Resources, Directorate of Fishery Resources, Department of Fisheries
- ◆ Sub-Secretariat of Protected Areas and Biodiversity, Directorate of Wildlife and Biodiversity, Department of Regulation and Control, and Directorate of Protected Areas, Department of Management of Protected Areas
- ◆ Sub-Secretariat of Forest Resources, Directorate of Forest Protection, Department of Fire Prevention and Control, and Directorate of Reforestation and Management of Forests, Department of Reforestation and Department of Forest Management and Industrial Forestry.

3.2.2 TYPES OF ENFORCEMENT ACTIVITY

Enforcement activities currently carried out by the Secretariat are generally in response to complaints received from citizens and the issuance of and supervision of compliance with environmental licenses or permits.

Most complaints currently received from the public are related to noise (mostly non-industrial noise) and illegal cutting or burning of forests. It was reported that a high number of complaints received are not related to environmental issues. Municipalities also submit complaints and requests for opinions, sometimes on land-use issues (such as certifying whether a use is industrial or commercial).

Supervision and enforcement activity in response to solicitations for permits and licenses is targeted at new and existing operations, both of which are required to prepare evaluations of environmental impact and environmental management plans to ensure adequate environmental management and mitigation of negative impacts. The licenses and permits issued are general in nature. Separate permits are not issued for specific types of discharges.

Aside from the Sub-Secretariat of Forest Resources, apparently little routine monitoring of compliance with environmental norms currently takes place. Forest Resources routinely monitors harvest, transport, and sawmill activity.

Despite the apparent clear definition of roles and functions (established in Resolution No. 016/2003, a resolution that approves the modification of the structure and responsibilities of the Secretariat), there is considerable confusion

within the Secretariat regarding which directorates and departments are responsible for which actions related to enforcement. For example, the division of responsibilities and authority between the Sub-Secretariat of Soils and Water and the National Institute for Hydrologic Resources (INDRHI) is not defined. There appears to be overlap of the enforcement authority between the Sub-Secretariat of Soils and Water and Environmental Management, as well as with Coastal and Marine Resources.

3.2.3 AUTHORITY AND POLICIES FOR ADMINISTRATIVE ENFORCEMENT, COORDINATION WITH ENVIRONMENTAL PROSECUTOR'S OFFICE, AND COORDINATION WITH OTHER INSTITUTIONS

The Environment Law does not define or adequately typify administrative environmental violations, nor does it specify administrative procedures for environmental enforcement. There is no governing law for administrative enforcement procedures in the Dominican Republic. Neither has a regulation been developed or adopted by the Secretariat to govern administrative enforcement.

The law does not clearly differentiate between administrative violations (infractions) and environmental crimes. The Environmental Prosecutor's Office interprets the law as saying that any violation of the law, regulations, norms, permits, or licenses is an environmental crime, therefore making all violations its responsibility. While it is generally agreed that the Secretariat has authority to supervise environmental compliance and identify violations, the Secretariat, in the absence of an administrative procedures law or regulation, is legally unable to impose administrative sanctions. It is forced to send recommendations for sanctioning to the Environmental Prosecutor for approval and action. The exception to this practice appears to be the Sub-Secretariat of Forest Resources, which seems to operate on its own and does issue administrative sanctions (the legality of which has been questioned by the Environmental Prosecutor's Office).

No written memorandum of understanding exists between the Secretariat and the Environmental Prosecutor's Office to govern lines of authority or mechanisms for exchange of information or coordination. However, some informal procedures have been established.

Actions are forwarded by the Secretariat to the Environmental Prosecutor's Office by means of written "oficios" accompanied by Acts of Inspection and technical reports. It is then up to the Environmental Prosecutor's Office to determine what actions to take regarding sanctions. The Secretariat reported that

it seldom receives follow-up reports from the Environmental Prosecutor's Office informing it of the results of the referrals.

The Secretariat provides technical support to the Environmental Prosecutor's Office in investigating complaints received there. Technical staff often accompany the prosecutor's staff to carry out initial inspections and investigations and to recommend measures for resolving the issues identified in the complaint. The Environmental Prosecutor's Office indicated that often the recommended measures are not achievable and that it is forced to find alternatives to the recommendations made by the Secretariat's technical staff person. Supervision of the implementation of enforcement actions are reportedly the responsibility of the Secretariat technical staff, but it is not clear how much this really takes place in practice.

The lack of authority for the Secretariat to act on its own in administrative enforcement actions, as well as problems with communication and coordination, have caused conflict between the Secretariat and the Environmental Prosecutor's office.

Considerable confusion exists, and no guidelines or agreements have been developed, about how the Secretariat should coordinate with other agencies in the area of environmental enforcement and environmental management in general, particularly with the Secretariats of Health, Public Works, Industry and Commerce, the Marines (Marina de Guerra), Port Authorities, and the municipalities. A certain level of coordination does take place in environmental inspections and enforcement with the Secretariat of Health in cases where public health threats are perceived. The need for coordination with the other agencies mentioned is related to the issuance of permits and licenses for new operations through the environmental impact evaluation process. No hierarchy of permit approvals has been established (for example requiring the environmental license prior to issuing a land-use permit).

3.2.4 INTERNAL PROCEDURES AND TRAINING

No written, uniform, formalized procedures exist within the Secretariat to govern enforcement activities and identify internal responsibilities and lines of supervision of enforcement actions. Each Sub-Secretariat appears to have developed its own informal and mostly unwritten procedures to govern inspections and establishment of sanctions. A preliminary proposal has been developed within the Directorate of Environmental Quality but is incomplete.

No manuals or written guidance exist for instructing technical personnel and inspectors in how to carry out environmental inspections and in how to document the inspections. Each Sub-Secretariat has developed different forms

for preparing Acts of Inspection and other activities, none of which is sufficient. No guidance exists for how to prepare a report of inspection or a recommendation for enforcement.

Technical staff responsible for enforcement activities have received little formal training in how to carry out inspections or prepare documents related to inspections.

It was repeatedly reported that the quality of the Acts of Inspection and technical reports was very poor, causing legal staff to be unable to determine the rationale or justification for enforcement actions. Behavior of staff responsible for inspection was also reported to be unprofessional at times.

3.2.5 TECHNICAL ASSISTANCE TO THE REGULATED COMMUNITY

Education of the regulated community regarding environmental laws, regulations, and norms is very important to promote environmental compliance. However, the Secretariat has not been able to offer much education or technical assistance to the regulated community, aside from information provided during inspections. Only the occasional seminar has been presented.

No reports, brochures, or other material have been developed to publicize or explain environmental requirements.

3.3 Prosecutor in Defense of Environment (Environmental Prosecutor's Office)

Although it is theoretically the Environmental Prosecutor's responsibility to investigate and prosecute environmental crimes, for the reasons previously mentioned, this agency is involved in nearly all types of enforcement involving investigations and sanctions, whether or not some cases would be more suited to administrative action.

It was reported that the majority of cases handled are related to non-industrial noise complaints (nuisance complaints). Approximately 99 percent of all cases are resolved by negotiated settlements, as it is the intention of the Environmental Prosecutor's Office to educate the regulated community and provide them with the opportunity to comply.

The Environmental Prosecutor's Office also receives complaints alleging environmental violations, either in the headquarters or in the regional offices. No complaint is ever referred to the Secretariat for processing. Instead, the Environmental Prosecutor's Office has established the policy that any complaint received in its office must remain there for investigation and possible

sanctioning. Because some complaints are reported both to the Environmental Prosecutor's Office and the Secretariat at the same time (and sometimes to the Environmental Police or other agencies), duplication of effort has occurred, with more than one agency investigating and issuing instructions for compliance without knowing the others were doing the same. At times the compliance instructions have been in conflict and as a result, the violator simply chose to not comply. In order to avoid these types of problems, the Environmental Prosecutor's Office, upon receiving a complaint, now routinely contacts the Secretariat in writing requesting information about existing licenses or permits, existing complaints being investigated, and technical reports. It also officially requests the support of technical staff in investigations of complaints. The same technical staff members are requested to provide follow-up supervision of the compliance. It is not clear how well this works in practice.

As previously mentioned some cases are sent by the Secretariat to the Environmental Prosecutor's Office for sanctioning. In the case of the Sub-Secretariat for Forest Resources, cases are forwarded to the Prosecutor's Office when administrative sanctions have not resolved a problem.

The Environmental Prosecutor's Office has established procedures for taking complaints, assigning a tracking number, and remitting the case to one of the attorneys for investigation. As previously mentioned, a technical staff person from the Secretariat often accompanies the Environmental Prosecutor's staff during the inspection. An Act of Inspection is prepared in which the recommended corrective actions are noted, depending on the type of case. At that point, a report for a citation is prepared if warranted and the violator is required to go to one of the regional offices to discuss the proposed citation. In most cases, the resolution is negotiated and the parties sign an Act of Agreement, which contains time periods for compliance. Upon compliance, an Act of Compliance is issued.

In more complex cases judicial action may be warranted and is required in the case of environmental crimes. It is unclear, however, how many, if any, cases have been forwarded on for judicial action.

Each magistrate within the office prepares a quarterly report describing all the cases worked on. A copy is sent to the Secretariat, but apparently does not filter down to the staff involved in enforcement activities.

Problems specifically identified by the Environmental Prosecutor's Office include:

- ◆ Not having Environmental Police on duty 24 hours a day in the event of emergencies
- ◆ Technical staff from the Secretariat recommending corrective actions that are not technically achievable and needing to renegotiate the corrective action
- ◆ Problems with confiscated wood during a criminal case (often the wood is not provided to the Environmental Prosecutor's Office or is sold before the case is concluded)
- ◆ Municipalities issuing permits for wood cutting or carrying out enforcement actions for which they have no authorization
- ◆ Lack of environmental capabilities and training among judges.

3.4 Environmental Police

It was reported that the Environmental Police work closely with the Environmental Prosecutor's Office and are seldom utilized by the staff of the Secretariat. An Environmental Police officer accompanies the Environmental Prosecutor's Office staff on nearly every visit to investigate a complaint.

The roles and responsibilities and the limits of authority of the Environmental Police have not been well defined, and they have received very little formal training. This has caused some problems in the environmental enforcement process. It was reported that on occasion Environmental Police had taken it upon themselves to provide supervision of compliance with an enforcement action, sometimes issuing additional and/or conflicting instructions to the violator without the knowledge of the Environmental Prosecutor's Office.

3.5 Municipalities

Municipalities are at the very beginning of the process to establish and staff their UGAMs. The seminar was a first step in exposing some municipalities to the legal context for environmental management, the operating procedures of the Secretariat and Environmental Prosecutor's Office, and the kinds of policies and procedures they need to consider in order to take on environmental management responsibilities. Eventually it is expected that the UGAMs will be instrumental in ensuring good environmental management of their own public-sector activities and in preparing ordinances and supervising their

implementation for ensuring adequate environmental management of activities and operations in the private sector.

It is important to note that in accordance with the Environment Law, any environmental norm adopted by a municipality must be more stringent than national norms. The mechanisms for reviewing proposed norms and determining whether they are adequate have not been developed. The law also requires that the process of environmental management at the municipal level be coordinated with the Secretariat of Environment and Natural Resources. No mechanisms or procedures have been established to define this coordination or to monitor the implementation of local environmental management to ensure it meets the intent of the Environment Law.

4 SUMMARY OF PROBLEMS DETECTED AND RECOMMENDED SOLUTIONS

Information obtained during interviews with staff of the Secretariat and the Environmental Prosecutor's Office and issues raised during the two seminars on environmental enforcement suggest four broad areas where action is necessary: 1) clarifying responsibilities and authorities for enforcement; 2) establishing well-defined internal procedures and preparing guidance documents for staff to implement the procedures; 3) establishing effective mechanisms of coordination among all actors involved in environmental enforcement and permitting; and 4) providing training in environmental enforcement.

The specific problems identified in the above sections are reiterated in the following table, together with recommendations for addressing the problems.

Problems	Recommended Actions
1. Lack of administrative procedures within the Secretariat limits authority for administrative enforcement actions and creates conflicts and duplication of efforts with the Environmental Prosecutor's Office	<p>1.a. As an interim measure, provide support to the 3-party committee formed during the seminars (members from the Secretariat, Environmental Prosecutor's Office, and municipalities) to discuss issues related to enforcement authority, begin to typify administrative vs. penal violations, and discuss coordination needs.</p> <p>1.b. Encourage better communication between the staff of the Secretariat directly involved in enforcement and the Environmental Prosecutor's Office by suggesting/promoting regularly scheduled meetings (or an alternative mechanism) to discuss cases and resolve differences.</p> <p>1.c. Conduct a training course for legal staff of the Secretariat in administrative law.</p> <p>1.d. Provide technical assistance to the Secretariat for the development of an administrative enforcement regulation (and/or law) that defines administrative infractions; provides criteria, responsibilities, and procedures for issuing sanctions; establishes procedures for appeals and supervision of the implementation of sanctions; and defines when an administrative action should be referred to the Environmental Prosecutor's Office. In addition, provide technical assistance in the development of additional tools or internal procedures needed for implementation (such as establishment of administrative hearings officers).</p> <p>1.e. Once an administrative enforcement regulation/law is adopted, provide training to Secretariat staff in its implementation.</p> <p>1.f. Assist the Secretariat in developing a standardized written procedure for receiving and responding to complaints.</p>

Problems	Recommended Actions
2. Problems with the quality of environmental inspections, lack of standardized inspection procedures, standardized forms and formats for acts of inspection, reports, etc.	<p>2.a. Provide technical assistance to prepare an internal inspection manual to serve as a guide to staff responsible for inspections. The manual could serve as a general guide for all Sub-Secretariats. Each Sub-Secretariat could then supplement the general manual with information and guidance specific to its own activities. Contents of the manual, to be developed in conjunction with Secretariat staff (and possibly staff of the Environmental Prosecutor's Office), should include at a minimum:</p> <ul style="list-style-type: none"> ▪ discussion of the basis and reasons for inspections/enforcement ▪ planning the inspection ▪ carrying out the inspection (how to interview, how to collect evidence, how to behave, etc.) ▪ documenting the inspection. <p>2.b Conduct training programs for all inspectors/technicians responsible for carrying out inspections, using the manual as the basis for training.</p>
3. Duplication of efforts and conflicts between actions taken by the Secretariat and Environmental Prosecutor's Office (and sometimes municipalities) when responding to complaints	3. Establish a <i>ventanilla única</i> or national toll-free telephone hotline for receiving complaints, or a coordinated system for receiving complaints and distributing them to the most appropriate agency for follow-up. Develop guidelines for making complaint distribution determinations (after adoption of an administrative enforcement procedures regulation or act).
4. Inefficient or improper functioning of the Environmental Police	<p>4.a. Form a commission of members of the Secretariat, Environmental Prosecutor's Office, and Environmental Police to establish responsibilities and limits of authority of the Environmental Police and to define working relationships among the three parties. Develop a memorandum of agreement or other official document to formalize operating parameters.</p> <p>4.b. Assess training needs of the Environmental Police and carry out a training program, using the document(s) mentioned above as a basis for training.</p> <p>4.c. Establish mechanisms for monitoring the activities of the Environmental Police.</p>
5. Lack of mechanisms for coordination between Secretariat and UGAMs, and need for ensuring adequacy of municipal environmental management	<p>5.a. Develop written policies to define policies and coordination/supervision mechanisms (possibly could start by forming a commission made up of members of the Secretariat and UGAMs that could dovetail with IRG's current work with UGAMs) to address questions such as:</p> <ul style="list-style-type: none"> ▪ What kind of support do UGAMs need from the Secretariat in establishing environmental management programs and environmental norms (for example, model ordinances issued by the Secretariat, seminars, or other support)? ▪ What will be the mechanisms for the Secretariat to review and approve municipal norms to ensure they are stricter than national norms (maybe a written operating agreement)? ▪ What will be the mechanisms for coordinating environmental management and enforcement at the municipal level? <p>5.b. Provide training programs in environmental law and enforcement for municipalities.</p>
6. Lack of coordination and understanding among agencies outside the Secretariat regarding environmental permits	<p>6.a. Assist the Secretariat in working with other agencies to define a hierarchy for permit approval with respect to the environmental authorization (for new operations and infrastructure).</p> <p>6.b. Assist the Secretariat in educating other national agencies as to their responsibilities under the Environment Law.</p>

Problems Detected and Recommended Solutions

Problems	Recommended Actions
7. Need for educating the regulated community as a means to improve environmental compliance	<p>7.a. Provide assistance to the Secretariat in developing and carrying out seminars with the regulated community (for example with trade organizations) with the intent of conveying environmental requirements, particularly under newly adopted norms.</p> <p>7.b. Provide technical assistance to the Secretariat in developing, publishing, and distributing easy-to-read brochures targeted at various sectors of the existing regulated community. For example: i) a brochure explaining how to comply with the new norm for gasoline stations, technologies available to do leak detection, etc. or ii) a brochure outlining the marina management norms for the marine industry, etc.</p>

5 PRIORITIZATION OF RECOMMENDED ACTIONS

It is suggested that the recommended actions be prioritized in the following way:

Highest priority (to be carried out in the next – second year of the program):

- ♦ Recommendations 1.a., 1.b., 1.c., 1.d., 2.a., 4.a.

Second priority (to be carried out in the third year of the program):

- ♦ Recommendations 1.e., 1.f., 2.b., 3, 4.b., 4.c., 5.a., 7.a.

Third priority (to be carried out in the fourth year of the program):

- ♦ Recommendations 5.b., 6.a., 6.b., 7.b.



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